

the Animal Rights Legal Advocacy Network Newsletter

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FIRST EVER ANIMAL WELFARE JURY TRIAL ENDS WITH A \$13,000 FINE FOR CRUEL TREATMENT OF HORSES

by *Sabrina Muck*

On March 12, the first jury trial ever held in respect of an Animal Welfare Act 1999 prosecution came to a successful conclusion for the Bay of Islands SPCA. George Albert of Kaihoko, who had been convicted by a jury ten days earlier for willfully mistreating one horse, and failing to meet the needs of a dozen others, was fined a total of \$13,000 for his actions.

The facts of the case were appalling. The SPCA had a number of complaints from the public about the condition of the horses on Albert's farm, and followed these up because Albert was repeatedly coming to the SPCA's attention. One horse had to be put down after it was found by the SPCA inspector to be emaciated and on the verge of collapse. Several others were found starving and another was tangled in a wire fence. The jury heard evidence that Albert's property was improperly drained and that much of it was underwater during the winter of 2001. A witness said the horses were "eating mud".

Jim Boyd, the Chief Inspector in charge of the Bay of Islands branch of the SPCA, was generally pleased with the verdict and penalty, but believed that Albert should have been imprisoned for his actions. In addition to the fine, Albert is prohibited from owning horses for 18 months, but Boyd is concerned about the fact that the surviving horses have simply been transferred to Albert's brother Eric's land which – according to Boyd – is of the same marginal quality, and overcrowded as well.

Northland solicitors have approached Mr. Boyd to tell him that the *Albert* case is the single most important prosecution of its type to take place in the area. Unfortunately, in past years Albert's conduct towards animals has set a standard for other people's treatment of their farm animals. Apparently he is somewhat of a community figure around Kaihoko and people feel comfortable following his example towards animals. Boyd hopes this case will set the record straight and set a clear precedent for what constitutes acceptable treatment of animals in both domestic and agricultural circumstances. [Continued on page 2]

SPCA v George Albert

CONVICTED: One count of willful ill-treatment; one count of failing to meet the needs of twelve horses.

ACQUITTED: Three remaining Animal Welfare charges.

TRIAL DURATION: Three days.

SENTENCE: \$8,000 fine on count one. \$5,000 fine on count two. Eighteen month prohibition order relating to horse ownership.

ARLAN NEWSLETTER

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MAF DUCKS OUT OF CRUELTY PROSECUTION

Mr. Boyd believes that animal welfare in Northland has never been at a satisfactory level, and that when he started his work with the Bay of Islands SPCA he was accused of being a "townie" trying to impose his city standards on country dwellers. He disagrees that there are different laws for those who live in the country, and although he knows he cannot change anything overnight, he has never wavered in his determination to prosecute serious cases, collect evidence, and do whatever else is necessary to protect animals in his area.

The biggest challenge facing the SPCA currently is their lack of resources. Of the 100 SPCA inspectors around New Zealand, at least 60% of these are volunteers, who need more than the normal dose of dedication to face characters such as Mr. Albert, who has, according to Mr. Boyd, threatened the inspectors who came on his land with a shotgun. The complaints about Albert's horses that led to this case were initially lodged with the Ministry of Agriculture and Fisheries, but the Ministry turned around and simply delegated it to the SPCA without hesitation. Boyd says this is a recurring problem and effectively results in the SPCA doing government work without funding or support of any kind, while MAF save themselves the \$ 30,000 it would have cost them to investigate and prosecute the complaint themselves. MAF have also bluntly refused to fund the trial or contribute to solicitor's fees, even though the complaint was originally in their domain.

The result of the case has been economically draining for the Bay of Islands SPCA. While Boyd was able to conduct the early proceedings, counsel was required for the jury trial, and while the barristers (McLeod & Partners, Kerikeri) worked at a discounted fee, the cost was nonetheless significant. A large portion of Albert's fine is due to go to the SPCA, but Boyd doubts the offender will pay willingly. The SPCA now has to rely upon court enforcement mechanisms that have proved wanting in the past.

The ARLAN Newsletter

Welcome to the 2nd edition of the ARLAN Newsletter for 2003. We hope you enjoy reading it and keeping up to date with our ongoing activities. **A major goal for us in 2003 is to increase our circulation numbers!** From 15 ARLAN members, our circulation went to 50 with our first issue, and has steadily risen to 222 as of this writing. We hope to reach 600 subscribers by the end of the year. Think of someone who might enjoy this newsletter and urge them to subscribe. Please pass it on!

ANIMAL WELFARE: DOES IT DELIVER AS PROMISED?

By Libby Schultz

The concept of animal “welfare” that underpins New Zealand’s Animal Welfare Act 1999 and most international animal cruelty legislation is “fundamentally flawed”, University of Auckland law lecturer Peter Sankoff told an audience of ARLAN members, law students and lawyers recently.

Speaking at the first installment of ARLAN’s 2003 seminar series on March 18th, Sankoff highlighted the troubling legal distinction between animal welfare and animal rights. While acknowledging that the enactment of the Animal Welfare Act was a positive step upon what existed previously, he attacked the legal basis for its operating principles.



“The Animal Welfare Act is now our leading statute on animals and its enactment in 1999 should be heralded as a landmark moment for New Zealand,” he said. “Still, I believe the Act is a deeply flawed legal document. There is a huge difference between laws designed to encourage animal welfare, and laws designed to promote animal rights.”

The difference stems from the core of the Animal Welfare Act’s core principles: that it is inhumane to *unnecessarily* hurt animals and secondly, that necessity is defined by weighing the benefit of the action against the harm it causes to animals.

“The most problematic aspect of animal welfare is that it focuses on a balancing test which is virtually impossible to put into practice,” explains Sankoff. “The key to determining whether cruelty has occurred is defined by whether it is *necessary* to cause the harm. Well, is it necessary to eat chickens? Is it necessary to kill an animal humanely even if it will cost 50% more to do so? There is no real way to sensibly answer this question.”

In a legal sense, the word necessary is inherently malleable – and the threshold to date seems so low that only the worst cases of cruelty will easily fall under it. “At its core, animal welfare is really about us - not the animals. It allows us to believe we are doing something to improve the treatment of animals, without compromising our desire to treat them as nothing more than property.”

Sankoff believes that a critical flaw of the welfare principle is that animals continue to be accorded legal protection which is closely linked to their value as property. “It’s no surprise that cases of cruelty against horses and cows have received the highest penalties. It’s not that they feel the most pain, or that the cruelty being committed against them is any worse; it’s simply that those animals are worth the most.” **[Continued on page 4]**

ARLAN SEMINAR FOCUSES ON DIFFERENCES BETWEEN ANIMAL WELFARE AND ANIMAL RIGHTS

There is also an arbitrary distinction drawn between different species of animals. “We are schizophrenic about our animals,” says Sankoff. “We don’t like dogs being beaten or abused, but its OK with possums. Don’t experiment on horses, but rats are OK. I sometimes think the number one working principle of animal law is ‘don’t harm the cute animals’.”

Leading theorists in animal law have attacked the various justifications for treating animals as property. They advocate a new model based upon extending the doctrine of legal personhood to animals,(in limited form) and thus granting them a form of inherent legal rights.

Every human being is granted inalienable legal rights from birth – regardless of their brain function, ability to reason, or capacity to feel pain. Yet the bonobo, a type of chimpanzee living in Africa, which shares 98% of our DNA and is generally regarded as one of the most intelligent animal on earth, has no greater legal rights than a snail.

“Animal rights theory is not that much different from human rights theory,” explains Sankoff. “While determining exactly what these rights should be will require some scrutiny, I believe the very idea of according rights will help bring some rationality to the law’s treatment of animals. Certainly it is a much more compelling starting point than the necessity principle which underpins animal welfare. Answering the question of whether and what rights should exist will require us to undertake a search that is quite common to lawyers: looking for ...reasoned distinctions which make sense.”

While legal personhood for animals will be a foreign concept for many, Sankoff pointed out that about 100 years ago – and still in many parts of the world today – women were not persons in law. Slaves in the United States during the 19th century had no rights either, a concept that today seems entirely alien to our modern eyes.

“The law is ultimately shaped by the power of ideas, and now for the first time people are beginning to question whether the legal definitions we have relied upon for millennia to deny animals any form of rights whatsoever really make sense,” he concluded.

“Is it just to exclude from legal protection the most vulnerable segment of our conscious planet? I suggest it is not, and that sooner or later, change is bound to come.”

The ARLAN Seminar Series was established to advance one of the organization’s primary goals: to help develop scholarship and promote awareness of the law relating to animals. Seminars are periodically held at the University of Auckland and cover a variety of topics. We have begun videotaping the seminars and Auckland members unable to attend the seminars can now borrow the tape. For info, e-mail: contact@arlan.org.nz

ANIMAL ETHICS COMMITTEES AND EXPERIMENTATION ON ANIMALS: A NEED FOR REFORM

by Anna Cowperthwaite

An examination of New Zealand's legal history reveals a distinct lack of awareness of many issues surrounding the treatment and well-being of animals. An area where this has been especially apparent is the law concerning animal research, testing and teaching. Every year in New Zealand hundreds of thousands of animals are used in varying forms of experimentation. A considerable number of those animals will experience a degree of suffering. Such activities would be an offence if conducted outside of the research community, yet until 1983 the law provided no regulation, or protection, for animal subjects of experimentation. The research community was left largely to its own devices to determine when and how animals could be used in research.

The status of the law has progressed since then. The rather basic provisions incorporated into the Animals Protection Act 1960 (and accompanying regulations) have evolved to the more comprehensive regime now in place under the Animal Welfare Act 1999 ("the AWA), which has given the legal protection of animals a clear focus on welfare. It aims to provide safeguards for the quality and standard of treatment received by all animals. This is partly achieved through the introduction of a duty of care on animal owners to "attend properly to the welfare of ... animals" by providing for their physical, health and behavioural needs, and by alleviating the pain or distress of ill or injured animals.

As with other countries, New Zealand has made an exception to its welfare provisions to allow for continued animal experimentation. This is achieved through Part 6 of the AWA, which incorporates principles of welfare, necessity and humane treatment, but allows a departure from the duty of care outlined above. So, while the AWA does not prevent animal experimentation, it has introduced greater protection for the animals used. Through the purposes of Part 6 and the AWA as a whole, the Act makes clear that animals are only to be used where necessary, and even then only when the benefits of their use outweigh the harm that is caused to them. These are all very positive steps in promoting animal welfare. However, they are only effective if properly implemented, and this is where concerns arise.

The AWA enacted a more comprehensive regime to administer animal research, testing and teaching:

1. Before a person or institution can conduct animal experimentation they must have an approved code of ethical conduct (CEC). This is basically a licence to operate. "The CEC lists the responsibilities of the code-holder, the steps to be undertaken in setting up an animal ethics committee, and the policies and procedures to be adopted and followed by the code-holder and the Animal Ethics Committee." (Ministry of Agriculture and Forestry, *Guide to Part 6 of the Animal Welfare Act 1999*, 10)
2. An institution must also establish an Animal Ethics Committee (AEC). Before a project can proceed, it must have been granted approval by an AEC. In assessing a project, the AWA (Section 100) lists a number of criteria the AEC must take into account. The criteria reflect the principles of necessity, welfare and humane treatment. Furthermore, they reflect the "Three Rs", which are the reduction, refinement and replacement of animal use in experimentation. **[Continued on page 6]**

Anna Cowperthwaite completed her LLB (Honours) at the University of Auckland in early 2003. This article is a summary of her Honours dissertation, "Animal Ethics Committees and the Accountability of Animal Research, Testing and Teaching in New Zealand", the second dissertation to be completed at Auckland in the area of animal law. The complete version is available in the Davis Law Library.

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The AWA was promoted as bringing greater accountability to animal research, testing and teaching. It recognised the public interest in determining what constitutes necessary and acceptable uses of animals, and rejected the view that the research community knows best. It is no longer acceptable for animals to be used in experimentation for any purpose whatsoever, and the AWA is claimed to have brought greater transparency and accountability to the process in several ways:

1. Animal Ethics Committees are required to have a minimum of four members, and three of these are to be lay-persons, independent of the institution concerned. These members are nominated by the SPCA, a national body of veterinarians, and a territorial authority or regional council respectively. Their inclusion is designed to provide representation of the public interest by bringing the views of society to the decision-making process - the public is said to have an input into the determination of appropriate and necessary uses of animals, and into when a harm to an animal will outweigh the proposed benefits of the project.
2. An independent review of every code-holder and AEC is conducted within two years of their CEC first being approved. Furthermore, all CECs have a limited time period of application (5 years), and so a review will also be conducted every time an application is made for the re-approval of a CEC.

There are concerns regarding the adequacy of the independent review process as a mechanism for accountability. Firstly, the review is essentially one of process. The compliance of the code-holder and AEC with their CEC is assessed, as is the decision-making process used by the AEC. However, the reviewer is not able to pass comment on the correctness or otherwise of the eventual decision that was reached. (The exception to this is "where failure to comply with the Act or poor process appears to have had a significant bearing on the decision": Animal Welfare Act 1999, section 106(2).) Secondly, reviews are carried out only once every two or five years. There is no inspectorate that performs regular, or surprise, visits to code-holding institutions. Finally, any 'natural person' can apply to be an accredited reviewer. There is no unitary inspectorate, and this has implications for consistency.

There are also a number of problems with the animal ethics committee system as currently implemented. For example, the ultimate responsibility for appointing members to an AEC rests with the institution to which it is attached. While an AEC must have three independent members, there is no restriction on the number of members that can be appointed from within the institution. Furthermore, there is no requirement that there be a balance between internal and external members. As a result an AEC may be biased, in terms of numbers, towards the institution to which it is attached. This is a concern particularly as AECs are not required to make their decisions unanimously. There is also evidence to suggest that lay members of AECs can feel intimidated either by being part of the minority, or because of a lack of scientific expertise. The extent to which the public interest and the views of society are represented is, therefore, questionable.

Furthermore, accountability is hindered by the lack of information flow between AECs and the public they are supposed to represent. This is evident from the difficulties that currently exist in obtaining information regarding the types of experiments taking place, the purposes for which animals are being used, and the degree of suffering they are experiencing. The only information that is readily available is through the aggregate statistics published in the National Animal Ethics Advisory Committee's Annual Report, or through the results of experiments that are published in journals.

It is very difficult to assess the extent to which the purposes of the AWA are being met when information is so hard to come by. The public is unable to readily ascertain whether institutions are in fact observing the principle of necessity or implementing the "Three Rs", and are given little opportunity to assist in defining parameters for what is deemed a necessary or acceptable use. This situation requires that a great deal of trust be placed with AECs and the independent review process, and the concerns outlined above mean that this is far from a satisfactory situation. **Continued on page 71**

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Of further concern is the fact that the Official Information Act 1982 (“the OIA”) and the Local Government Official Information and Meetings Act 1987 (“the LGOIMA”), which are designed to give the public access to information held by government and those exercising a public function, are not readily applicable to AECs. This is despite the fact that, in making decisions regarding the use of animals in experimentation, AECs are performing a public function. The AWA made the treatment of animals a concern of central government, and the responsibility for decision-making regarding the necessary and acceptable uses of animals has been delegated to AECs. Furthermore, the inclusion of lay-people as representatives of the public view lends further weight to the argument that such decisions involve the public interest.

The difficulties in applying these two statutes to AECs would seem to go against the general purposes of those Acts, which aim to provide greater accountability of government. The difficulty in applying the Acts to AECs arises from the fact that all government departments and organisations subject to the regimes under those two statutes are established through a listing mechanism – there is no broad definition of a “public body”. Animal ethics committees are not listed in any of the relevant schedules, and so neither Act is directly applicable to them.

The OIA can still be used to access information from an AEC, but this is achieved through a more circuitous route. Many of the institutions that carry out animal experimentation are attached to a government department of some kind, or are crown research institutes. As such, an application can be made to the government department to which they are attached to obtain information such as the minutes of an AEC meeting.

There are greater difficulties with using the LGOIMA. This Act provides access to information held by local government, and also provides a right to attend their meetings, and copies of agendas, minutes and reports. Therefore, if this Act could be directly applied to an AEC, it would greatly assist the flow of information, and thus the transparency and accountability of animal experimentation. However, as AECs are not listed in any of the relevant schedules, it is uncertain how the LGOIMA can be applied to them. The Ministry of Agriculture and Forestry has stated that they anticipated that publicly funded organisations carrying out animal experimentation would be subject to the LGOIMA (Ministry of Agriculture and Forestry, *Guide on Codes of Ethical Conduct*, (2002) 14.). However, a recent application by Dr Michael Morris to AgResearch under the LGOIMA was declined on the basis that AgResearch were not subject to that Act.

The AWA recognises there is public interest in matters concerning the use of animals in experimentation. It has provided safeguards, in the form of codes of ethical conduct, animal ethics committees and the independent review process, to prevent the unnecessary use of animals in experimentation, and to restrict the suffering caused to them. However, these protections are meaningless without accountability. The current mechanisms in place to achieve that accountability are not adequate, and the paucity of available information only contributes to this problem. While the AWA has certainly brought a greater degree of consistency and protection than existed previously, it is doubtful it has gone far enough. More detailed information regarding the nature and purposes of experimentation involving the use of animals needs to be made available to the public. The current law is not capable of achieving this, and until this situation changes, much trust must continue to be placed within the institutions conducting the projects.

REPORT FROM WELLINGTON

by Shannon Austin

ARLAN Wellington has enjoyed a recent boost to its numbers thanks to the advertising efforts of some of our student members at Victoria University. We are now in the process of establishing a student sub-group who will hold regular meetings, with one of their aims being to try and convince Victoria University to offer papers, or at least supervision, in animal law topics.

Several members are currently undertaking research on animal law issues. In particular, Annabel Markham, a criminal litigator, has almost completed an opinion on what the SPCA can do with animals that it removes from abusive owners who it subsequently prosecutes while those owners are going through the court system. Annabel hopes to have this opinion available for circulation soon. Other topics being researched are the effect of s73 of the Animal Welfare Act, and the Dog Control Act.

The Wellington group held a meeting on 10 March 2003. At the meeting we discussed ways of increasing our profile and educating both ourselves and the wider community about the legal status of animals. These included contacting possible speakers for animal law seminars, the possibility of offering assistance to "Animal Action" members who are arrested in the course of protesting animal rights, and attending ongoing education seminars on the philosophy of animal rights.

ARLAN Wellington hopes to continue its drive for student membership by continuing to distribute pamphlets and hold meetings around Victoria University. However, we also need more qualified solicitors in our ranks, so please contact us if you're a lawyer, or a law student, living in Wellington who loves animals.

ANIMAL LAW WEB SITE OF THE MONTH

This month's profile, by *Stephen Gallagher*, is www.dlrm.org

This website is run by an organisation called Doctors and Lawyers for Responsible Medicine ("DLRM"). DLRM's sole objective, and the focus of the website, is the immediate and unconditional abolition of all animal experiments, on medical and scientific grounds.

The site contains banners to DLRM's latest news, campaigns and aims, and also describes how to join their group. Members receive free newsletters which can be accessed on this site, as can references to other books, audio and video footage.

Whilst visiting the site I also took the opportunity to sign DLRM's online petition for a Judicial Inquiry into the questionable scientific validity of animal experiments in medical research.

An appealing part of the website for those interested in the area of animal testing, or just curious as to the issues that it raises, is the link where Dr André Menache answers users most frequently asked questions. These include answers to questions such as what's wrong with using chimpanzees in the study of human disease? Or mice? If animal models are useless, what else is there?

I discovered that that chimps and humans share 98.4% of their DNA. Still, I also found out that there are significant differences in the immune system of chimps and humans, including that chimps are resistant to HIV, Hepatitis B and a common form of malaria.

For further facts and information regarding the use of animals in experiments this site is a must.

ANIMAL LAW IN THE NEWS

by Peter Sankoff

BEEF AND LAMB MARKETING BOARD ADVERTISEMENT TARGETS ETHICAL VEGETARIANS

Sometimes it seems like the insensitivity of those in the meat “producing” business knows no bounds. A recent advertisement, produced for the Beef and Lamb Marketing Board, went a step too far. The television ad, shown across New Zealand, attempted to promote the benefits of beef and lamb by showing a parade of butchers walking through the streets, chanting and banging pots and pans, apparently enthused about another beef or lamb repast.



Dancing and chanting butchers. Just a “coincidental” resemblance to religious vegetarians the Hare Krishnas, say the Beef and Lamb marketers.

The ad immediately drew condemnation from Hare Krishnas in New Zealand, a group which believes strongly in vegetarianism as a tenet of its faith. In effect, the ad mocked the Krishnas, suggesting that the lure of meat was strong enough to convert anyone to its lure.

A complaint to the Advertising Standards Complaints Board was made by the International Society for Krishna Consciousness. The complaint stated:

“The advertisement in question promotes the consumption of meat, which in itself is not objectionable. What is objectionable and offensive is the accompanying images, namely people dressed as butchers dancing and chanting...

It is common knowledge that our followers/members undertake dancing and chanting in the Holy name of Lord Krishna. The dancing and chanting in the advertisement in question mimics that done by members of the Society.

It is also common knowledge that members of the Society are vegetarians, and the Society actively promotes vegetarianism.

The advertisement is an ineffective attempt at humour. It breaches the guidelines set by the Authority and falls well below the standard of decency required.

The Society had very good grounds for a complaint. The Broadcasting Standards Authority has previously issued Codes of Practice which state that “advertisements should not portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offense on the grounds of their gender: race: colour: ethnic or national origin; age; cultural religious, political or ethical belief...” **[Continued on page 10]**

The ad was simply in bad taste, and was offensive to the many people – whether they are religious Hare Krishnas or not – who believe that ethical vegetarianism is an essential part of their belief structure. It attempted to mock those who choose not to consume the very product that the advertisement was promoting, and in doing so, caused offence.

Thankfully, the Advertising Standards Complaints Board agreed and swiftly moved to halt the ads. In a letter to the complainants and the Beef and Lamb Marketing Board, Heather McKenzie, Deputy Secretary of the Advertising Standards Complaints Board noted that “after carefully considering the information received from all parties the Board decided that the complaint be Upheld as there had been a breach of relevant code. In accordance with self-regulatory principles all parties have been requested to voluntarily withdraw the advertisement in its present form and to ensure that advertisements containing the material complained of do not appear in the future.” The ads have now been modified in accordance with the Board decision.

The Board’s full decision should be available in a few weeks, and will be reported upon in next month’s newsletter.

CRUELTY TO ANIMALS IN NEW ZEALAND: DOES THE GOVERNMENT CARE?

After years of watching miniscule sentences being imposed for animal cruelty offences in New Zealand, it is always rewarding to see a punishment that bucks the trend. The \$13,000 fine imposed on Northland resident George Albert, while short of the deserved jail sentence for a case that District Court Judge Gittos described “as not being one of ignorance”, was substantial.

That said, two aspects of this case bear close analysis, and both relate to topics I raised in this month’s ARLAN Seminar on the difference between Animal Welfare and Animal Rights. For me, the most troubling fact to emerge from this case had nothing to do with George Albert. Rather, it was the revelation from SPCA Inspector Jim Boyd that the complaint was registered first with the Ministry of Agriculture and Fisheries – a government body – who did nothing more than delegate it to the SPCA. The case resulted in a lengthy jury trial, and the costs of the trial had to be borne by a private agency who receives nothing in funding from the government!

This is nothing short of a disgrace. While the SPCA is struggling to do what it can with animal prosecutions, and does its best with meager resources, the government of New Zealand continues to shirk its responsibilities. In my view, animal cruelty in New Zealand will continue to be an offence with a low profile, low enforcement and low sentences until the principles of the Animal Welfare Act 1999 are finally backed up with some legislative will, and some financial resources. For the government to simply blame the judiciary for the problem, as it has in the past, is nothing more than sheer hubris.

Also worth noting is the sentence itself. While animal advocates were understandably excited about the size of the penalty, with RNZSPCA head Peter Mason going so far as to call it “a historic decision” that shows that “the courts are finally beginning to take animal cruelty cases seriously”, I find it difficult to see this as a precedent that will have a major impact on sentencing. It is hardly a coincidence that the two highest fines in New Zealand **[Continued on page 11]**

history for animal welfare offences both related to cruelty against horses. Simply stated, sentencing for these offences in New Zealand continues to reflect a judicial view that the punishment should reflect the *value* of the animal, rather than the cruelty involved. Cases of cruelty against dogs and cats (animals of lesser value), some of which were more severe in nature than the crimes committed by Albert, have hardly budged upward in spite of a \$10,000 penalty awarded last year for cruelty against a horse. (See the ARLAN Newsletter, Vol.1, No.2, July 2002)

In this month's ARLAN Seminar, I spoke of how the Animal Welfare Act 1999 – in spite of its laudable stated principles – remains bound to a legal system that treats animals as nothing more than property. Sentences relating to animal cruelty have consistently demonstrated this to be true. The problem stems from the fact that when measuring the “seriousness” of the crime, a court is bound to look at the “interest” harmed, which, under our system is still reflected by the value of the injured “property”.

One potential solution would be for the Animal Welfare Act 1999 to have its own set of sentencing principles. These could reflect that sentencing should relate primarily to the degree of pain inflicted, whether it was deliberate or negligent, and the injuries suffered by the animal. They should also take into account past acts by the offender. Until a change in legislative or judicial thinking occurs, it is difficult to see one large fine as indicative of a major shift in approach.

On a final note, it is worth pointing out that in spite of some severe acts of cruelty, and in contrast to countries like the United States, Australia, the U.K and Canada, New Zealand has still yet to have an animal welfare offence leading to imprisonment for the offender.

THE VALUE OF A COMPANION ANIMAL – NOT JUST THE PURCHASE PRICE

A significant change is set to take place in Colorado that would allow pet owners to seek proper damages for injuries suffered by their pets. Currently, the common law treats animals as nothing more than property, and law suits seeking to recover for negligence or intentional acts against animals have always foundered on the ability to obtain damages for anything more than the animal's worth. For most cats and dogs, these values are incidental to the animal's true worth as a loved member of the family.

A bill in Colorado would allow those with pets to sue for up to \$100,000 where the death of an animal is caused by abuse or negligence. The bill would be the first of its kind in the world, and a major advance for animal rights advocates, who have generally failed in bids to have the courts recognize the true value of companion animals, and the impact these deaths have on families. [See ARLAN Newsletter, Vol.1, No.4, p.13]

The bill may face a tough ride through the Colorado Legislature, as it is opposed by veterinarians who would suddenly be responsible for their malpractice.

CALL FOR HELP!

One of ARLAN's central mandates is to improve the understanding and accessibility of the law relating to animal welfare. We have made no secret of our dissatisfaction with the difficulty in accomplishing this. New Zealand law in this area is notoriously hard to research, as most judgments are unreported, and scattered across the country.

Peter Sankoff, Lecturer at Auckland University's Faculty of Law, and member of ARLAN's Executive Committee, has begun research and organization for a short text tentatively entitled Animal Welfare Law in New Zealand. The idea for the text is to provide practitioners, judges and legislators with handy access to the law relating to animals. It will discuss the theoretical underpinnings of Animal Welfare law and make recommendations for improvements.

Unfortunately, we recognize that most of the law in this area is unreported and somewhat difficult to access. As a result, we are hoping to circumvent this problem by calling on you, ARLAN's members and newsletter readers, to assist in any way you can. We urgently require copies of ANY unreported cases with some legal significance decided under:

- The Animal Protection Act 1960
- The Animal Welfare Act 1999
- The Dog Control Act
- The Marine Mammal Protection Act

A database of all the cases in ARLAN's possession has now been compiled. Rather than sending copies of case material, send a list of cases in your possession that can be checked against our database.

Case names can be mailed to:

Peter Sankoff
9 Eden Crescent
Faculty of Law
University of Auckland
Auckland

Case names and numbers can also be e-mailed to: p.sankoff@auckland.ac.nz

The creation of a text on animals will hopefully promote better consistency and accuracy in the law. Your assistance is invaluable to this exercise.

ARLAN NEWS

ARLAN MOVING AHEAD ON LITIGATION MATTERS

February and March have been busy months for the Auckland chapter of ARLAN. In February, a meeting at Auckland University brought together a number of our lawyer and student members to discuss priorities for 2003. We agreed that two immediate priorities involved: 1) improving our links with the SPCA and becoming more involved in animal cruelty prosecutions, and 2) providing submissions on the proposed amendments to the Dog Control Act.

Both of these objectives have seen a great deal of movement over the past few weeks. Contact has been made with the SPCA and we have agreed to provide them legal assistance in a number of areas. We hope to provide legal updates to their training manuals that should assist when evidentiary matters arise in court that are of concern to prosecuting inspectors. In addition, we are assisting on another confidential matter.

ARLAN is also working on behalf of private clients in relation to a number of matters involving the custody of animals where such custody is disputed. Several members have agreed to beginning researching the law in regards to a number of topics, including "who owns an animal", and what can be done when ownership is disputed. Where possible, ARLAN hopes to make these opinions available to the wider public for consultation.

The Dog Control Submission Group has begun preparing to make submissions to the Select Committee that will be deciding on amendments to the *Dog Control Act 1996*. ARLAN's position on this issue will be set out in a future issue of the newsletter.

ARLAN SEMINAR SERIES UPDATE

Established in 2002, the ARLAN seminar series is designed to advance legal scholarship relating to animals and the law in New Zealand. In 2002, ARLAN members, law students and legal practitioners enjoyed two informative and thought-provoking seminars from Peter Sankoff "Animal Law: A Subject In Search of Scholarship" and Sue Kedgley "Animal Ethics Committees: The Secrecy of Animal Research in New Zealand". Our 2003 series kicked off with Peter Sankoff's seminar discussed earlier in the newsletter. Two other speakers have been confirmed for this year. Neil Wells, from the School of Animal Health and Welfare at Unitec, and one of the original drafters of the Animal Welfare Act 1999, is next up and should be speaking sometime in April. For updated seminar information, check out www.arlan.org.nz

THE NEW AND IMPROVED ARLAN WEB SITE

ARLAN's web site (www.arlan.org.nz) is new and improved for 2003. Our front page has been redesigned, the information has been updated to reflect current projects, and more features are being added. The goal for the site remains the same: to provide an information "warehouse" on animal law in New Zealand. The site is a success so far! Tracking information shows that we are receiving several thousand hits a month from New Zealand and international visitors. Check it out and spread the word!

Barks, Meows and Squawks

A collection of notable quotes on animals and the law.

"In July 2002, the Ministry of Agriculture and Forestry received a complaint about the state of animals on Mr. Summers' farm... It was clear after the inspections had taken place there were serious animal welfare problems in relation to Mr. Summers' animals. Those in the worst condition had to be shot to put them out of their misery, and 318 others were removed...

"The Judge referred to the inadequacies of Mr. Summers' farm and the very serious situation which led to the Ministry's intervention. He said he was very unimpressed with Mr. Summers as a witness, and found that the evidence showed Mr. Summers to be incompetent to such a degree that it would be wrong to return animals to his farm. Accordingly, he declined Mr. Summers' application under s.133(3) for the return of animals to his farm."

-O'Regan J., summarizing the findings of Everitt DCJ. in *Summers v/MAF*, 4 Feb. 2003, M53/02. Everitt DCJ quite sensibly rejected an application by Mr. Summers to return the animals in the possession of MAF prior to his trial on charges of animal cruelty.

"I accept that while the Judge's assessment of Mr. Summers was clearly a relevant factor in the decision, the Judge also ought to have taken into account the pre-trial proposals to protect the welfare of the animals in making his decision... In my view, the [judge's] approach meant there was inadequate recognition of the limited scope of the proceeding, which was to determine what should happen pending trial. That involves a balancing of the rights of Mr. Summers in respect of his property (recognizing that he is entitled to the presumption of innocence until his trial takes place) against the need to protect the welfare of animals."

-O'Regan J. of the High Court, ultimately tipping the balance (hardly a surprise) in favour of the property owner and returning a number of animals to Mr. Summers pending trial, in spite of overwhelming evidence that the "farm was in poor condition... [with] poor pasture conditions, poor soil fertility... [and] inadequate drainage..." It is also worth noting that Summers had been convicted of animal cruelty offences in 1989, and the Ministry also intervened in 1999 after complaints.

Animal Rights Legal Advocacy Network

Improving the law to improve the conditions of animals

ARLAN is an organization of New Zealand lawyers and law students established in 2001, working to improve the law as it affects animals. We need your help to make this a reality.

How you can help?

- **Information**– By joining our e-mail chat group you can learn more about animal law issues in New Zealand. In turn, you can keep us posted about issues arising near you. E-mail: contact@arlan.org.nz to join in. Also, check out our web page: www.arlan.org.nz
- **Become an Active Member of ARLAN** – ARLAN urgently needs dedicated lawyers and law students who care about the plight of animals to join our cause. We succeed only to the extent that we have supporting volunteers who are willing to help. There are a number of ways you can assist, and what we need most is your time and enthusiasm! Several projects are underway and require assistance:
 - the **ARLAN Newsletter** needs volunteers to assist in writing and production. We also require volunteers outside of Auckland to assist in distributing our newsletter. To help out contact: newsletter@arlan.org.nz
 - the **ARLAN Animal Cruelty Committee** needs volunteers to help us ensure that better animal cruelty prosecutions are undertaken where animals are deliberately hurt. This committee is still in the process of being established, but for more information, contact: cruelty@arlan.org.nz
 - the **ARLAN Legislative Review Committee** needs volunteers to assist in reviewing and making submissions on legislative initiatives at different levels of government. To help contact: betterlaws@arlan.org.nz
 - support ARLAN and learn about Animal Law by attending one the **ARLAN Seminar Series**. Watch out for notices in this newsletter.
- There are other ways to help!** If you're not sure what you wish to do, just send us an e-mail at any of the addresses listed above. We'll find a way for you to help!
- **Support ARLAN Financially** – ARLAN is a non-profit organization that exists through the generosity of its members and supporters. While we endeavour to keep costs low, several of our activities require some degree of financial support including the maintenance of our website, and distribution of this newsletter. Any amount you can give would be hugely appreciated. To make a financial contribution, contact: contributions@arlan.org.nz, or simply send a cheque made out to ARLAN to: ARLAN, PO Box 6065, Wellesley St., Auckland, New Zealand.